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PATENT  
ATTORNEY DOCKET NO. DIVER1280-6

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Short et al.  
Serial No.: 09/738,871  
Filed: December 14, 2000  
Title: HIGH THROUGHPUT SCREENING FOR A BIOACTIVITY OR  
BIOMOLECULE

Art Unit: 1645  
Examiner J. Epperson

Commissioner of Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

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RESPONSE TO RESTRICTION REQUIREMENT

Sir:

In response to the Requirement for Restriction mailed February 12, 2003, Applicants elect Group III, claims 65-72, with traverse. The Examiner further requested restriction to the following species: Subgroup 1, a species of organism (claim 65); Subgroup 2, a species of encapsulation (claim 21); and Subgroup 3, a species of flow cytometer. Applicant respectfully traverses the requirement for a species election, but understands that this restriction is strictly for search purposes.

Accordingly, Applicants elect thermophiles derived from the environment, as the species of organism for Subgroup 1. Applicants elect gel microdroplets as the species of Subgroup 2. Applicants respectfully request that the requirement for species election of Subgroup 3 be reconsidered. Applicants' invention is based on screening mixed populations of organisms in a microenvironment, for example a microdroplet, rather than the device that is utilized for the screening. Any type of flow cytometry device would be useful in the claimed invention and would not require a separate search.

CERTIFICATION UNDER 37 CFR §1.8

I hereby certify that the documents referred to as enclosed herein are being deposited with the United States Postal Service as first class mail on May 12, 2003, in an envelope addressed to: Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

*Cara Grifone* 5/12/03  
Cara Grifone

In re Application of:  
Jay M. Short, et al.  
Application No.: 09/738,871  
Filed: December 14, 2000  
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Applicants respectfully traverse the requirement for the species election because all the methods for high throughput screening of a library of polynucleotides will have to be searched multiple times. Thus, the Examiner will be required to search the same group of references over and over again, causing much waste of time and energy. In addition, the Applicants will be required to file and prosecute multiple applications, entailing much delay and cost that could be avoided by rejoining the species in the claims. However, Applicants understand that this restriction is strictly for search purposes.

Applicant's invention is based on screening organisms in a population, rather than the device that is utilized for the screening that is used. Any type of flow cytometry device would be useful in the claimed invention and would not require a separate search. In addition, Applicants respectfully request that all species be rejoined should no prior art be found.

Respectfully submitted,

Dated: May 12, 2003



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